

**DECISION**

*P. Lieberman*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20540

7956

FILE: B-199663

DATE: October 5, 1978

**MATTER OF:** Patrick L. Peters - Claim for Retroactive  
Compensation While Performing Higher Level  
Duties

**DIGEST:** Electrical Engineering Technician, GS-7, who alleges that he performed duties of GS-11, Electrical Engineer position vacant for 7 months seeks reconsideration of GAO decision denying backpay. Claimant admits he was not qualified for GS-11 position and did not have time-in-grade required by Whitten Amendment. However, he now claims backpay for performance of GS-9 duties and submits evidence that he has been temporarily promoted to Electrical Engineering Technician, GS-9, in 1976. Disallowance is sustained. Additional evidence does not prove detail to GS-9 and subsequent temporary promotion has no relation to period of claim.

This action concerns a request by Mr. Patrick L. Peters for reconsideration of decision B-189663, November 23, 1977, which affirmed the denial by our Claims Division of his claim for retroactive compensation for performing the duties of Electrical Engineer, grade GS-11, during the period March 8 through October 29, 1976, while employed as an Electrical Engineering Technician, grade GS-7, by the U.S. Naval Ammunition Depot, McAlester, Oklahoma.

The facts are stated in our decision of November 23, 1977, and will not be repeated except to the extent necessary for resolution of the points raised in the request for reconsideration. Mr. Peters claimed backpay for the period March 8 through October 29, 1976, and our decision sustained the denial of his claim by our Claims Division. We sustained the denial because (1) the proper course for Mr. Peters to have pursued would have been an appeal of his position classification to the Civil Service Commission if there had been an accretion of his duties; and (2) his case was distinguished from Reconsideration of Turner-Caldwell, 56 Comp. Gen. 427 (1977), and cases cited therein, since he was not officially detailed to perform the duties of the higher grade position, he did not possess the requisite engineering degree or equivalent experience to qualify for the higher grade position, and he had not met the requisite time-in-grade required under

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section 1310 of the Act of November 1, 1951, 65 Stat. 757, as amended, 5 U.S.C. 3101 note.

In a letter dated February 3, 1978, Mr. Peters submitted copies of projects which had been assigned to him, stated such assignments were evidence that he had performed higher grade duties during the period of his claim, and claimed compensation for "fulfilling the requirements, demands and responsibilities of the electrical engineer for the period mentioned at a two (2) grade interval (promotionally)." In a letter dated June 13, 1978, the claimant agreed that he was not an engineer and did not possess the background for that position. However, he asserted that he had the necessary one-the-job training to perform the higher grade duties, and that the evidence previously submitted constituted proof of a detail to perform the higher grade duties. Finally, in a letter received in our Office on August 11, 1978, Mr. Peters stated that the position of electrical engineer has become vacant again and he has been given a temporary promotion to Electrical Engineering Technician, grade GS-9.

In his letters requesting reconsideration, Mr. Peters admits that his regular position is grade GS-7 and he does not question that part of the decision of November 23, 1977, covering the matter of classification. Rather he claims that certain work assignments constitute a detail to higher grade duties. In this connection his letter of February 3, 1978, claims compensation for grade GS-9, instead of that for grade GS-11 previously claimed.

Mr. Peters' position description shows that his work covers a wide range of engineering problems varying in degree of novelty and complexity. Also, the projects assigned to him are of limited scope and are severable parts of larger electrical projects. Mr. Peters submitted copies of assignments made to him, but he has not submitted any statements by responsible agency officials that the work covered by them is the kind of work performed by a higher grade engineer or technician. Therefore, we cannot accept the copies of the assignments as evidence that Mr. Peters performed higher grade duties, or that he was detailed to perform the duties of a higher grade position.

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We note that Mr. Peters was given a temporary promotion to grade GS-9, Electrical Engineering Technician, effective July 1, 1978. He asserts that this shows he is entitled to the pay of that grade for the period of his claim in 1976. We find no connection between the temporary promotion in 1978 and the claimed detail in 1976.

In the absence of sufficient evidence of a detail to a GS-9 position during 1976, we must sustain our decision of November 23, 1977, disallowing the claim.

  
Deputy Comptroller General  
of the United States



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

*P. Lieberman*  
*PLHI*

In reply refer to: B-189663

October 5, 1978

The Honorable Wes Watkins  
House of Representatives

Dear Mr. Watkins:

Further reference is made to your letter of June 23, 1978, concerning the claim of Mr. Patrick L. Peters, 1307 East Delaware, McAlester, Oklahoma, for backpay.

We have carefully reconsidered our disallowance of Mr. Peters' claim but, unfortunately, have found no proper basis on which it may be allowed. For your information, we have enclosed a copy of our decision which states the basis for our action.

We regret that a conclusion more favorable to your constituent was not possible under the circumstances.

Sincerely yours,

*R. G. K. H. M.*  
Deputy Comptroller General  
of the United States

Enclosure